Pollock Mfg., Inc.[1] and its alter egos Elite Mfg., Inc., Charles C. Pollock t/a Pollock Apparel, Charles E. Pollock, and Blake Pollock *and* Amalgamated Clothing and Textile Workers Union, AFL–CIO. Cases 10–CA–25760 and 10–CA–25948

November 26, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

On March 26, 1993, Administrative Law Judge Philip P. McLeod issued the attached decision. The Respondents and the General Counsel filed exceptions with briefs in support, and the Respondents filed an answering brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt his recommended Order as modified.[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondents, Charles E. Pollock, an individual, Pollock Mfg., Inc., Elite Mfg., Inc., and Charles C. Pollock t/a Pollock Apparel, Blakely, Georgia, their officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Add the following as paragraph 1(a) and reletter the subsequent paragraphs.

''(a) Threatening to close their facilities unless their employees stop supporting the Union.''

2. Substitute the following for paragraph 2(a).

''(a) On request, recognize and bargain collectively with Amalgamated Clothing and Textile Workers Union, AFL–CIO as the exclusive collective-bargaining representative of the employees employed in the bargaining unit. The unit is:

> ''All production and maintenance employees employed by the employer at its Blakely and Newton, Georgia, facilities, but excluding office clerical employees, plant clerical employees, mechanics, professional employees, guards and/or watchmen and supervisors as defined in the Act.''

3. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
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> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

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[1] The caption is amended to reflect the correct names of the Respondent corporations.

[2] The Respondents have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The Respondents also except to the judge's failure to resolve the issue of whether Charles Pollock, Pollock Manufacturing's president, had a good-faith doubt of the Union's majority support prior to his withdrawal of recognition from the Union in December 1991. The Respondents assert, in effect, that the evidence requires a finding favorable to them on this issue and that their alleged good-faith doubt is a complete defense to the alleged violations. We disagree. ''In order to justify the serious step of withdrawing recognition without an election, the Board requires that the bases on which an employer relies be objectively established.'' *T.L.C. St. Petersburg*, 307 NLRB 605, 605 (1992). Accordingly, ''in order to rebut the presumption of an incumbent union's majority status, an employer must show by a preponderance of the evidence either actual loss of majority support or objective factors sufficient to support a reasonable and good-faith doubt of the union's majority.'' *Laidlaw Waste Systems*, 307 NLRB 1211, 1211 (1992). In the present case, a former Pollock Manufacturing employee testified that she circulated a decertification petition in late October 1991. She never told Pollock about the petition and it was thrown away after Pollock Manufacturing closed. There is no evidence in the record that would indicate that Pollock himself ever saw the petition or otherwise knew what the petition stated or the number of employees who had allegedly signed the petition or their names. In these circumstances, the Respondents cannot rely on the petition as objective evidence to support their claim of good-faith doubt. See *Laidlaw Waste Systems*, supra at 1212. We note further that Pollock never advanced the Union's purported loss of majority status as a basis for the withdrawal of recognition. See, e.g., *Hilton Inn North*, 279 NLRB 45, 45 fn. 1 (1986).

[3] The judge found that Supervisor Gruber's statement to Pollock Manufacturing employee Smith to the effect that the employees should get out of the Union because the Respondent was tired of the Union and was going to move work to another facility constituted a threat of plant closure in violation of Sec. 8(a)(1). However, the judge inadvertently failed to include this violation in his Conclusions of Law and recommended Order. We amend the judge's Conclusions of Law accordingly and shall modify the recommended Order to include this violation. In addition, the judge inadvertently included Blake Pollock's name in his notice to employees. Because the judge found that Blake Pollock should not be held individually liable, his name is deleted from the attached notice.

WE WILL NOT threaten to close our facilities unless our employees stop supporting the Union.

WE WILL NOT decide to close, close, and reopen facilities under a different name in an effort to terminate existing bargaining relationships and to escape the obligations imposed by collective-bargaining agreements.

WE WILL NOT fail and refuse to apply to all employees in the contractual bargaining unit all terms and conditions of employment contained in the collective-bargaining agreement between Pollock Mfg., Inc. and the Union, absent the express written consent of the Union.

WE WILL NOT terminate operations, replace, discharge, refuse to reinstate, or otherwise discriminate against employees regarding hire or tenure of employment or any term or condition of employment for engaging in activities on behalf of a labor organization or for engaging in activity protected by Section 7 of the Act.

WE WILL NOT refuse to recognize and to bargain collectively with the Union in the contractual bargaining unit found appropriate.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, on request, recognize and bargain collectively with Amalgamated Clothing and Textile Workers Union, AFL–CIO as the exclusive collective-bargaining representative of the employees employed in the bargaining unit. The unit is:

> All production and maintenance employees employed by us at our Blakely and Newton, Georgia, facilities, but excluding office clerical employees, plant clerical employees, mechanics, professional employees, guards and/or watchmen and supervisors as defined in the Act.

WE WILL apply the terms and conditions of the collective-bargaining agreement with Amalgamated Clothing and Textile Workers Union to the employees employed in the appropriate bargaining unit.

WE WILL make whole all employees and any appropriate trust fund for all losses suffered as a result of the failure to apply the terms and conditions of the aforesaid collective-bargaining agreement to employees employed in the bargaining unit.

WE WILL offer to all employees terminated as a result of the closure of Pollock Mfg., Inc. immediate and full reinstatement to their former positions of employment dismissing, if necessary, anyone who may have been hired to perform the work that they had been performing prior to the date on which they were terminated or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for all losses suffered as a result of the discrimination against them.

POLLOCK MFG., INC. AND ITS ALTER EGOS ELITE MFG., INC., CHARLES C. POLLOCK T/A POLLOCK APPAREL, AND CHARLES E. POLLOCK

Richard P. Prowell, Esq., for the General Counsel.
Frank C. Vann, Esq., of Camilla, Georgia, for the Respondent.

DECISION

STATEMENT OF THE CASE

PHILIP P. MCLEOD, Administrative Law Judge. I heard this case in Blakely, Georgia, on September 30 and October 5 and 6, 1992. The charges which gave rise to this case were filed by Amalgamated Clothing and Textile Workers Union (the Union) against Pollock Manufacturing, Inc. (Pollock Manufacturing) and its alleged alter egos Elite Manufacturing, Inc. (Elite Manufacturing or Elite), Charles C. Pollock t/a Pollock Apparel (Polock Apparel), Charles E. Pollock, and Blake Pollock on January 14 and April 24, 1992. On July 15, 1992, an order consolidating cases, consolidated complaint and notice of hearing issued which alleges, inter alia, that each of the entities and individuals named above (collectively Respondents) are alter egos of one another who violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act) by ceasing operations of Pollock Manufacturing and discharging its employees in order to avoid collective-bargaining obligations to the Union, by initiating business enterprises known as Pollock Apparel and Elite Manufacturing with separate labor forces where Respondent refused to recognize the Union and apply the terms of the existing collective-bargaining agreement to those facilities in order to avoid collective-bargaining obligations to the Union.

In their joint answer to the consolidated complaint, Respondents admitted certain allegations including the filing and serving of the charges; the status of Pollock Manufacturing as an employer within the meaning of the Act; and the status of certain individuals as supervisors and agents of Respondent within the meaning of the Act. Respondent denied the supervisory status of certain other individuals, denied the alter ego status of Respondents, and denied having engaged in any conduct which would constitute an unfair labor practice within the meaning of the Act.

At the trial here, all parties were represented and afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. Following the close of the trial, counsel for the General Counsel and Respondents both filed timely briefs with me which have been duly considered.

On the entire record in this case and from my observation of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Pollock Manufacturing, Inc. is, and has been at all times material, a Georgia corporation which, during the times indicated here, operated a sewing facility in Blakely, Georgia. In the course and conduct of its business operations, Pollock Manufacturing annually provided services valued in excess of $50,000 for enterprises which, in turn, meet a direct standard for assertion of the Board's jurisdiction.

Pollock Manufacturing, Inc. is, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

Based on the evidence discussed below, it is also my finding that Pollock Apparel, Elite Manufacturing, Inc., and Charles E. Pollock are alter egos of Pollock Manufacturing, and, as such, constituted a single employer within the meaning of Section 2(6) and (7) of the Act.

II. LABOR ORGANIZATION

Respondents denied the status of the Union as a labor organization as defined in Section 2(5) of the Act. The record reflects that employees participate in the organization of the Union and that it exists for the purpose of representing employees and engaging in collective bargaining on their behalf with employers. I find that Amalgamated Clothing and Textile Workers Union is, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Pollock Manufacturing, Inc.*

In December 1990, Brew Apparel decided to close its Blakely, Georgia textile facility. Charles E. Pollock had been plant manager of that facility, and when its closing was announced, Pollock negotiated and eventually purchased both the building and equipment. Pollock then formed Pollock Manufacturing, Inc., putting into the corporation the assets purchased from Brew, including both the building and all equipment. Pollock is the sole stockholder of the corporation, and its president. Charles C. (Chris) Pollock (Chris Pollock), who is the 27-year-old son of Charles E. Pollock, was named corporate vice president and assistant secretary/treasurer. Chris Pollock never actually worked for and never drew a salary from Pollock Manufacturing. Throughout all times relevant to this proceeding, Chris Pollock has been employed full time by Proctor & Gamble in Albany, Georgia, approximately 50 miles from Blakely. Blake Pollock, the 22-year-old younger son of Charles E. Pollock, was named as corporate secretary/treasurer. At the time the business was formed, Blake Pollock was still in college, but he later joined his father in day-to-day operations of Pollock Manufacturing.

In addition to the assets placed into the business by Charles E. Pollock, Pollock Manufacturing secured certain financing necessary for its day-to-day operations. The corporation, with Charles E. Pollock's personal endorsement, obtained an operating loan line of credit with Bostwick Banking Company in an amount of $250,000. It also obtained a ''revolving loan fund'' loan from a regional/rural development corporation (RDC) in a net amount of $125,000.

Pollock Manufacturing operated as a contract manufacturer of garments in the apparel industry. It did not produce and then attempt to sell products on the open market. Instead, it contracted with other manufacturers to cut and sew various garments to their specification. Although Pollock Manufacturing owned the entire building and all of the equipment previously used by Brew at its Blakely, Georgia facility, its operations were considerably smaller from those of its predecessor. As a result, the plant was partially sealed off to save on utility expenses. The portion of the facility not used for production purposes was devoted to storage of equipment purchased from Brew but not utilized by Pollock Manufacturing.

Employees at the Brew facility had been represented by the Union for many years. Pollock Manufacturing, Inc. agreed to recognize the Union and honor its existing collective-bargaining agreement with Brew subject to two amendments, one relating to seniority and the other relating to insurance rates. These amendments/concessions were agreed to by the Union, and the existing collective-bargaining agreement was assumed in writing by Pollock Manufacturing.

Pollock Manufacturing began losing money from the very beginning. It incurred unexpected overhead expenses, quality control problems related to workmanship, and under estimated insurance costs. On several occasions during its operation, Pollock Manufacturing sought, and was sometimes afforded, concessions on economic issues by the Union. Based on the concessions sought and agreed to by the Union, it is clear that one of Pollock Manufacturing's principle focuses was its expenditure for health insurance for its employees. In fact, Charles E. Pollock concedes that his still unpaid debt to the union health program eventually forced him to close the business in December 1991, as discussed below.

Pollock Manufacturing employee Lillie Nell Smith testified that in late November or early December 1991, Supervisor Mary Alice Gruber spoke to her about getting out of the Union. Smith testified credibly that Gruber stated Smith should get out of the Union because Charles E. Pollock was tired of the Union ''getting on his case'' and that he ''was going to ship all the stuff to Newton and close the plant down.'' Newton is the plant which Pollock opened under the name Pollock Apparel, discussed in greater detail below.

Respondent's answer denies that Gruber was a supervisor within the meaning of the Act. Lillie Smith testified credibly, however, that Gruber regularly assigned work to employees. Moreover, in his testimony, Charles E. Pollock admitted that Gruber selected employees for layoff and recall based on her evaluation of the employees. I find that Gruber was a supervisor within the meaning of the Act.

Gruber denied making the statements attributed to her by Smith. Gruber, who was once a union member, claimed that she never talked to employees about the Union at all. In view of various grievances which had been filed by employees at Pollock Manufacturing and in view of ongoing negotiations between Pollock Manufacturing and the Union over various contract consessions, I find it simply incredible that Gruber, who, as I have indicated was herself once a union member, never talked to the employees about the Union at all. Respondent called 13 former employees of Pollock Manufacturing to testify that they had never heard Gruber make any threats to anyone concerning their union activity. From this, Respondent argues that Smith should be discredited.

Some of these 13 former employees of Pollock Manufacturing are now employed by, and in fact investors in, Elite Manufacturing. I have no doubt that many of the 13 were testifying truthfully, just as I have no doubt that some of the 13 testified as they did solely to help exculpate Charles E. Pollock, on whom they depend for their livelihood. It is not necessary, however, to comment individually on the credibility of these 13 individuals. None of them was a witness to the conversation between Gruber and Smith. As between Smith and Gruber, I have no trouble crediting Smith, who testified in a candid, truthful manner concerning this conversation.

I find, based on the credible testimony of Lillie Nell Smith, that Supervisor Mary Alice Gruber advised employees to get out of the Union because Pollock was tired of problems with the Union and was going to move work to the Pollock Apparel plant in Newton and close down Pollock Manufacturing. I find this threat to close Pollock Manufacturing because of the Union violated Section 8(a)(1) of the Act.

B. *Pollock Apparel*

In mid-1991 a textile facility closed in Newton, Georgia. Newton is approximately 40 miles east of Blakely and 10 miles west of Camilla, Georgia, where Charles E. Pollock resides. In November 1991, Pollock rented a portion of this closed facility and started what he called Pollock Apparel. Pollock did not incorporate this business, but rather registered it for purposes of a business license under his son's name, Charles C. (Chris) Pollock t/a Pollock Apparel. Pollock admits that his son, Chris, never took an active part in this business, that Chris was employed full time elsewhere during the time this business was in operation, and that its actual operation was conducted by himself, Charles E. Pollock, and a supervisor transferred directly from Pollock Manufacturing, Inc.

That Pollock Apparel was from its inception a ruse simply for Pollock Manufacturing to avoid certain obligations is shown not only by Pollock listing the business in his son's name, when in fact Pollock was himself solely responsible for operating the business, but equally by the way the business was financed. The business was started with about $5300. Charles E. Pollock supposedly loaned this amount to Charles C. (Chris) Pollock to start the business. This supposed loan was based solely on a purported verbal agreement, and was never even reduced to writing. As indicated, Chris Pollock never had anything to do with the operation of the business. With the ''loan'' of money from Charles E. Pollock to Chris Pollock and Charles E. Pollock selling himself sewing equipment from Pollock Manufacturing, Charles E. Pollock initiated and operated Pollock Apparel.

Pollock Apparel began operations in November 1991 with 10 employees. Whereas Pollock Manufacturing, Inc. performed cutting, sewing, and shipping functions, Pollock Apparel operated solely as a sewing facility. It received precut material from Pollock Manufacturing, sewed the material, and returned it to Pollock Manufacturing for shipment.

In addition to Pollock and the supervisor transferred from Pollock Manufacturing, four additional employees on the Pollock Manufacturing payroll were sent to work at Pollock Apparel to train employees. When Pollock Manufacturing shut down in December 1991, as more fully discussed below, at least nine employees were transferred from Pollock Manufacturing to Pollock Apparel. They remained there until Pollock began a third business, Elite Manufacturing, back in Blakely. The transferred employees then went to work for Elite.

While Pollock Manufacturing and Pollock Apparel had separate bank accounts, payroll and accounting functions were performed for both facilities by Blake Pollock. Charles E. Pollock contended that Pollock Manufacturing and Pollock Apparel were operated at arm's length. Pollock asserted, for example, that Pollock Apparel was billed by Pollock Manufacturing for packing and shipping functions performed by Pollock Manufacturing for Pollock Apparel. In fact, however, all the evidence suggests that Pollock Apparel was never more than a diversion of certain labor functions away from Pollock Manufacturing in order to save on labor costs by avoiding obligations pursuant to the collective-bargaining agreement with the Union. As the sole person who operated both entities, Charles E. Pollock was able to determine which work would be performed by Pollock Manufacturing and which work by Pollock Apparel. Cutting functions and shipping functions were all performed by Pollock Manufacturing. Equipment used at the Pollock Apparel facility came from Pollock Manufacturing. Pollock simply effected a paper transaction in which he sold himself certain sewing equipment from Pollock Manufacturing, and which he then leased to Pollock Apparel. Pollock admitted that contrary to formal agreements calling for payments of monthly rent for use of that equipment, Pollock Apparel in fact never paid rent or reimbursement for its use.

After Pollock Manufacturing, Inc. was shut down in December 1991, as more fully discussed below, Pollock Apparel continued to operate for another 8 months. Pollock Apparel was eventually also shut down on August 23, 1992. Charles E. Pollock admits that although Pollock Apparel is now out of business, the alleged ''loan'' be made to Chris Pollock has never been repaid.

C. *The Closing of Pollock Manufacturing, Inc.*

In November and December 1991, financial conditions at Pollock Manufacturing became particularly burdensome. Pollock Manufacturing was behind 6 months in payments on its loan to RDC. It was behind in tax payments, and it was considerably behind in payments pursuant to the collective-bargaining agreement for insurance benefits to employees. In December 1991, Bostwick Banking Company refused to make any further advances on its line of credit to Pollock Manufacturing.

Pollock scheduled a meeting with the Union to discuss further contract concessions. On the night of December 18, however, Pollock made the decision to close Pollock Manufacturing. Pollock canceled the meeting with the Union, and on December 19, wrote to the Union advising them of his decision to close. Pollock offered to bargain with the Union concerning the effects of the plant closing on employees. On December 20, Pollock informed employees that Pollock Manufacturing was closing immediately.

In early January 1992, Pollock reached agreement to sell the building owned by Pollock Manufacturing to another textile manufacturer, Dana Undies, in Blakely. Pollock was allowed to retain use of a large room in the building for storage of equipment. Proceeds of the sale were used by Pollock

Manufacturing to pay loans secured by the property and taxes that were due.

On January 15, 1992, Pollock met with RDC to request that their loan be left in place. Pollock also asked if the loan could be shifted to a new company. RDC declined to continue the loan and told Pollock that the loan could not be shifted to a new company unless Pollock could come up with evidence of the value of existing equipment and his ability to be successful in a new venture.

On January 17, 1992, Pollock and union representatives met to discuss the effect of the closing of Pollock Manufacturing on its employees. The Union demanded that Pollock extend recognition to the Union and apply the terms of the collective-bargaining agreement at the Pollock Apparel facility. It also demanded that Pollock recognize the Union at any other plant he might set up in the future. Pollock claimed that he did not have authority to extend the collective-bargaining agreement to Pollock Apparel. Pollock claimed that this was solely his son's operation, knowing full well this was untrue. Pollock also declined to extend recognition to the Union at any future plant he might open. The meeting ended unsatisfactorily for all parties.

D. *Elite Manufacturing, Inc.*

The testimony of Charles E. Pollock makes it appear that the birth of Elite Manufacturing, Inc. was entirely the seed of former employees of Pollock Manufacturing who approached him about the possibility of opening up another plant, and that he was simply acting out of civic responsibility. The record, however, reflects that a few weeks before Elite was started, Pollock asked RDC to shift its loan to a new company. Further, before the first organizational meeting was ever held to form Elite, Charles E. Pollock had already obtained access to another sewing facility where the business is now located. Thus, I conclude that Pollock was obviously planning some reentry into the sewing industry when one or more of the former employees of Pollock Manufacturing fortuitously approached Pollock about his future plans. Pollock advised that he did not have the money with which to open another plant and that he was unable to obtain financing. Someone suggested the possibility of former employees of Pollock Manufacturing investing some of their own money in a new business, and a meeting was planned to discuss trying to raise money for that purpose.

On January 27, 1992, Charles E. Pollock met with about 25 former employees of Pollock Manufacturing to try to see if they could raise enough money to start a new business. Pollock held this meeting at the facility which he had already lined up and which would become the future home of Elite Manufacturing, Inc. In addition to other former Pollock Manufacturing employees who attended the meeting, three local union officers, Jewelean Griffin, Jacquelyn Henderson, and Rebecca George, attempted to attend the meeting. Former Pollock Manufacturing Supervisor Ferell Evans became agitated by their presence, called them ''uninvited guests,'' and offered to throw them out. Pollock told Evans to calm down, and that if he could not do so, he should leave. Pollock then called the three individuals into what was to become his office. It is undisputed Pollock told them that the purpose of the meeting was to try to raise money to form a new company. What Pollock said after that is in dispute. Griffin and Henderson testified credibly Pollock stated he did not want them at the meeting if they came to cause trouble, and he feared they would go back and tell the Union what he might say at the meeting. Griffin and Henderson also testified credibly that Pollock stated he intended to operate this new business in a nonunion setting.

Charles E. Pollock testified that after telling the three local union officers the purpose of the meeting was to raise money for a new business, he then told them they were welcome to stay if they wanted to stay. According to Pollock, the three chose on their own accord to leave. Katherine Lee, a former Pollock Manufacturing employee who attended the meeting but who decided not to invest in the new company, testified that as the three local union officers were leaving the facility, she heard Pollock tell them that they were welcome to stay at the meeting. A composite of the credible testimony of Griffin, Henderson, and Lee leads me to conclude that Pollock invited/requested the three local union officers to leave the meeting for fear they would report back to the Union, but as they were leaving, Pollock publicly expressed a willingness to let them stay. I do not conclude that the three local union officers left on their own accord. Rather, they were invited and requested to leave, although not forcibly ejected.

The January 27 meeting continued with about 25 former Pollock Manufacturing employees. The result of that meeting was that eight former employees of Pollock Manufacturing each agreed to invest $1000 to help form a new business. Whether Pollock's contribution to the new business was established that night is not altogether clear, but Pollock eventually put up $35,000 as more fully discussed below.

Although Elite Manufacturing, Inc. was not incorporated until mid-March 1992, Elite was actually formed in January and began business in mid-February 1992. As with Pollock Manufacturing, the corporate officers are Charles E. Pollock, president, Charles Chris Pollock, vice president, and Blake Pollock, secretary-treasurer. The eight former Pollock Manufacturing employees who each invested approximately $1000 together own 19 percent of Elite Manufacturing stock.[1] Charles E. Pollock, Chris Pollock, and Blake Pollock together own 81 percent of Elite stock. This stock represents their collective $35,000 investment. This $35,000 was obtained by a paper transaction in which Pollock Manufacturing ''sold'' 70 sewing machines to Charles E. Pollock. These sewing machines were then used as collateral for a personal loan of $30,000 from Planters & Citizens Bank to Chris and Blake Pollock.

As with Pollock Manufacturing, Charles E. Pollock is in sole charge of the day-to-day business operations of Elite Manufacturing. As with Pollock Manufacturing, Elite Manufacturing manufactures garments by contract in the apparel industry. As with Pollock Manufacturing, Blake Pollock works as an employee in the day-to-day operations of Elite, while Chris Pollock has nothing to do with its day-to-day operations.

The facility from which Elite Manufacturing operates is in downtown Blakely, Georgia, only about a mile away from the previous Pollock Manufacturing facility. The Elite Manufacturing facility is leased from, and is the old facility occupied by, Dana Undies, which purchased the Pollock Manu-

[1] For reasons which are not apparent in the record, one former employee, Betty Cleveland, invested $1265. The others each invested $1000.

facturing facility. The vast majority of Elite Manufacturing employees and supervisors are former employees and supervisors of Pollock Manufacturing, working in the same job classifications previously held. Indeed, 42 employees and supervisors hired by Elite worked in the same job classifications as they did at Pollock Manufacturing. The equipment used by Elite Manufacturing all came from Pollock Manufacturing in the paper transaction previously described by which Charles E. Pollock purchased it from Pollock Manufacturing and then leased it to Elite Manufacturing.

The record warrants a conclusion that Charles E. Pollock refused to hire certain former employees of Pollock Manufacturing at Elite Manufacturing because of their status as officers, former officers, or particularly active members of the Union. Elite Manufacturing began production on February 18, 1992. On February 19, 11 employees named in the complaint went to the Elite facility with their union representative and asked for work. Pollock responded that there were no applications available, although he knew all of these employees personally and was well aware of their background and qualifications. The employees were told to come back the following day, when applications were provided. All employees named in the complaint submitted applications on February 20, except Phillip Duffell and Flora Battle. Duffell and Battle, however, were present in the group which attempted to apply on February 19.

None of these individuals who approached Respondent with their union representative were hired in spite of the fact that almost all of Elite's employees and supervisors came from the ranks of former Pollock Manufacturing employees. The reason advanced by Charles E. Pollock for not hiring any of these individuals rings particularly hollow. The sole reason advanced by Pollock in his testimony was that these individuals responded on their applications for work at Elite when asked how much they expected to make by stating a dollar amount higher than the rate being paid by Elite. None of the applications indicate that any of these individuals would not work for less than the amount stated, yet Pollock did not even give any of them the opportunity to accept or reject less by offering them a job.

Analysis and Conclusions

In determining whether two or more entities are alter egos, several factors are considered, including interrelation of operations, common ownership and financial control, centralized control of labor relations, and common management. Additionally, the determination that one entity is merely the alter ego of another depends to some extent on whether the transfer of assets or the dissolution of the old entity is motivated by union animus. *Haley & Haley*, 289 NLRB 649 (1988), enfd. 880 F.2d 1147 (9th Cir. 1989); *Crawford Door Sales Co.*, 226 NLRB 1144 (1976).

In almost every alter ego case there are some differences between the entities involved, and such is the case here as well. Pollock Manufacturing, Pollock Apparel, and Elite Manufacturing each had separate business licenses and separate bank accounts at different banks. All have had separate business locations. The main difference between each of these entities, however, has been the size of the financial arrangements which served as their foundation and the size of their respective business operations. Pollock Manufacturing had as its financial foundation a $125,000 ''revolving loan fund'' and a $250,000 operating loan line of credit. Pollock Manufacturing owned or was in the process of purchasing the real estate and building from which it operated. Pollock Apparel was a much smaller operation, limited to performing only sewing work. It was begun with a mere $5300 ''loan'' from Charles E. Pollock to Chris Pollock. This ''loan,'' however, was never even reduced to writing, much less secured.

Elite Manufacturing was begun with total operating capital of approximately $43,000. Each of eight former employees of Pollock Manufacturing who invested approximately $1000 owns a small portion of stock in Elite Manufacturing. While Charles E. Pollock owned 100 percent of the stock of Pollock Manufacturing, and while Pollock and his two sons together own 81 percent of Elite Manufacturing, a substantial portion of that 81 percent is owned by the two sons, Charles Chris Pollock and Blake Pollock. Just as the financial underpinning of Elite Manufacturing is much smaller than that of Pollock Manufacturing, so too is the scope of its business operations. Elite Manufacturing began operations in February 1992 with approximately one quarter the number of employees of Pollock Manufacturing. As of the time of the hearing here, Elite Manufacturing had never been larger than one-half the size of Pollock Manufacturing.

While there are some differences between Pollock Manufacturing and Elite Manufacturing, primarily the size of the operation and, to some extent, a difference in ownership, there has also been significant interrelation of operations, common ownership and financial control, a centralized control of labor relations, and common management between all three businesses. All three businesses are identical in that they all are engaged in the sewing industry performing contract work. The record is quite convincing that Pollock Apparel was never more than a mere extension of Pollock Manufacturing. Although supposedly owned by Chris Pollock, it was funded by a ''loan'' of $5300 by Charles E. Pollock. The machinery used by Pollock Apparel came from Pollock Manufacturing by a mere paper transaction in which Charles E. Pollock as sole owner of Pollock Manufacturing sold certain equipment to himself which he then leased or rented to Pollock Apparel. Charles E. Pollock admits that in fact Chris Pollock had nothing to do with the operation of Pollock Apparel, that he (Charles E. Pollock) was the person solely responsible for operating this business, and that in fact he never received any rent for use of the machinery. Pollock Apparel neither cut material nor packed or shipped finished products. These functions were performed by Pollock Manufacturing. Both supervisors and employees of Pollock Manufacturing were transferred to Pollock Apparel. Later, many of these employees went to work for Elite Manufacturing. In short, Pollock Apparel was nothing more than a small labor force gathered by Charles E. Pollock which he secreted in a separate location from Pollock Manufacturing employees in order to avoid paying contractual wages and, more particularly, fringe benefits. Charles E. Pollock simply used his son's name in establishing this business in order to advance the claim, as he later did when confronted by the Union, that the business was not his own. I find that Pollock Apparel was the alter ego of Pollock Manufacturing. By failing to apply the terms and conditions of the collective-bargaining agreement between Pollock Manufacturing and the Union to employees of Pollock Apparel, they jointly violated Section

8(a)(1) and (5) of the Act. *O'Neill, Ltd*., 288 NLRB 1354 (1988).

The record also establishes without question that Charles E. Pollock is solely responsible for the day-to-day operation of Elite Manufacturing, Inc. Even before the first organizational meeting was held to form Elite Manufacturing, Pollock had secured space for what would become its location. In a not-too-subtle effort to avoid being the majority stockholder, stock was issued to sons Chris and Blake Pollock in return for an ''investment'' of $30,000 loaned to them by an independent bank but secured by equipment owned by Charles E. Pollock, which he in turn supposedly ''purchased'' from Pollock Manufacturing. Blake Pollock works for Elite Manufacturing simply as an employee, and Chris Pollock has nothing to do with Elite Manufacturing, just as he had nothing to do with Pollock Manufacturing. Regardless of the circuitous route which he has tried to create, at every intersection the roadsign points back to Charles E. Pollock. Either directly or indirectly Charles E. Pollock has owned and controlled all of the entities involved here. Moreover, all have been engaged in the same business enterprise, utilizing the same employees, the same equipment, and working toward the same end. The Board has traditionally found alter ego status to exist where businesses exhibit common family ownership, a common business purpose, and evidence that other business enterprises were formed to escape economic obligations arising from a collective-bargaining relationship. *Advance Electric*, 268 NLRB 1001 (1984). It is control, not ownership, which is critical to an alter ego finding. *Omnitest Inspection Services*, 297 NLRB 752, 754 (1990); *O'Neill, Ltd*., supra; *Denzil S. Alkire*, 259 NLRB 1323 (1982). I find that Elite Manufacturing Company, Inc. is an alter ego of Pollock Manufacturing, Inc. and Pollock Apparel. By failing to apply the terms of the collective-bargaining agreement between Pollock Manufacturing and the Union to employees of Elite Manufacturing, Inc. both entities have jointly violated Section 8(a)(1) and (5) of the Act.[2] By discharging employees of Pollock Manufacturing and establishing these alter egos for the purpose of avoiding obligations pursuant to the collective-bargaining agreement with the Union, Pollock Manufacturing and its alter egos have violated Section 8(a)(1) and (3) of the Act.

[2] In its posttrial brief, Respondent argues that the collective-bargaining agreement between Pollock Manufacturing and the Union permitted Pollock to establish a new facility without applying the terms of the collective-bargaining agreement to it. That argument is rejected. I have carefully examined the collective-bargaining agreement between Pollock Manufacturing and the Union, and I find no such authority granted Pollock by the terms of that agreement. I would note that this argument was first raised by Respondent's counsel in its posttrial brief. The collective-bargaining agreement states that it applies only to the employees at the one location whom it was originally meant to cover. Rather than granting the employer future rights to close one business location and open another, the contract language is simply an acknowledgement that as of the time it was being signed, it applied only to the one existing location. The contract expressly states that the right to terminate or discharge employees does not include the right to discriminate against them because of union activities. Nowhere do I find anything in that contract which might grant the employer the right to establish an alter ego for the purpose of avoiding contractual obligations.

The Issue of Individual Liability

Heretofore, the conclusions have treated the liability of the various business enterprises that are named as the Respondents. The complaint also names Charles E. Pollock and Blake Pollock in their individual capacities. The General Counsel argues that the facts here warrant the conclusion that Charles E. Pollock's control over the other Respondents, and his individual conduct in the commission of the unfair labor practices, warrants ''piercing the corporate veil'' to impose individual liability on Charles E. Pollock, Charles C. (Chris) Pollock, and Blake Pollock individually in order to prevent inequity and the frustration of the policies of the Act. Respondents argue that none of these individuals should be held personally liable because there is no evidence that any of them diverted any of the assets of any of the corporations or entities involved here for their own personal gain. Respondent argues that piercing the corporate veil is not justified.

The findings made above show that Charles E. Pollock owned all the stock of Pollock Manufacturing. In spite of licensing Pollock Apparel in his son Chris' name, Pollock Apparel was entirely and solely operated by Charles E. Pollock. An analysis of the financial arrangements which served as the underpinning for Elite Manufacturing shows that as a practical matter Charles E. Pollock has dominated and controlled that entity from its outset. Although Pollock supposedly owns a minority of the outstanding stock, Pollock and his two sons together own 81 percent of the corporation. The stock issued to sons Chris and Blake was purchased with $30,000 loaned to them in return for security in equipment owned not by them but by Charles E. Pollock. Lastly, the record clearly establishes that Charles E. Pollock has effected various sales of equipment from Pollock Manufacturing to himself for the purpose of leasing or renting them to other entities involved here. Further, Charles E. Pollock is solely responsible for the day-to-day operations of Elite Manufacturing.

The foregoing findings demonstrate conclusively that Charles E. Pollock personally was the dominate figure in the plan of evasion that I have described above and that he committed substantial personal assets to achieving this goal. In the absence of imposing personal liability on Charles E. Pollock for the unfair labor practices that have been found, it is most likely that the remedy provided and the purposes of the Act will be totally frustrated. I find that Charles E. Pollock is the alter ego of Pollock Manufacturing, Inc. as well as Pollock Apparel and Elite Manufacturing and is individually responsible for the unfair labor practices. *O'Neill, Ltd*., supra, and cases cited there.

I am not as convinced the record here warrants a finding of individual liability on Charles C. (Chris) Pollock or Blake Pollock, other than as noted here. Neither of these individuals owned Pollock Manufacturing, and neither controlled either Pollock Manufacturing or Pollock Apparel. Even now, in spite of their nominal ownership of Elite Manufacturing, Chris Pollock has nothing to do with and is not even employed by Elite. All indications are that Blake Pollock is in reality simply an employee of Elite, just as he was simply an employee of Pollock Manufacturing. Charles C. (Chris) Pollock is, of course, individually liable as the legal owner of record of Pollock Apparel, but I would limit his individual liability to that portion of the remedy directly applicable to

Pollock Apparel failing to apply the terms of the collective-bargaining agreement to its employees. Without more, I will not impose any further individual liability on either Chris Pollock or Blake Pollock.

CONCLUSIONS OF LAW

1. Pollock Manufacturing, Inc. is, and has been at all times material, a Georgia corporation which prior to December 1991 operated a sewing facility in Blakely, Georgia, and is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Charles E. Pollock, an individual; Charles C. (Chris) Pollock t/a Pollock Apparel; and Elite Manufacturing, Inc. have been and are the alter ego of Pollock Manufacturing, Inc., and have been a single employer within the meaning of Section 2(2) of the Act, engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

3. Amalgamated Clothing and Textile Workers Union is, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

4. At all times material, Amalgamated Clothing and Textile Workers Union has been the exclusive collective-bargaining representative of the employees in the appropriate unit described below within the meaning of Section 9(a) of the Act:

> All production and maintenance employees employed by the employer at its Blakely and Newton, Georgia, facilities, but excluding office clerical employees, plant clerical employees, mechanics, professional employees, guards and/or watchmen and supervisors as defined in the Act.

5. By terminating the employees of Pollock Manufacturing, Inc. for the purpose of avoiding the terms and conditions of the collective-bargaining agreement then in effect and to avoid certain obligations under the Act, Pollock Manufacturing, Inc.; Charles E. Pollock, an individual; Charles C. (Chris) Pollock t/a Pollock Apparel; and Elite Manufacturing, Inc. violated Section 8(a)(1) and (3) of the Act.

6. By refusing to reinstate the employees employed at Pollock Manufacturing, Inc. described above in paragraph 5, Pollock Manufacturing, Inc.; Charles E. Pollock, an individual; Charles C. (Chris) Pollock t/a Pollock Apparel and Elite Manufacturing, Inc. violated Section 8(a)(1) and (3) of the Act.

7. At all times after December 1991, Pollock Manufacturing, Inc.; Charles E. Pollock, an individual; Charles C. (Chris) Pollock t/a Pollock Apparel; and Elite Manufacturing, Inc. violated Section 8(a)(1) and (5) of the Act by repudiating the collective-bargaining agreement then in effect and applicable to the employees in the unit described above; by unilaterally altering the wages, hours, benefits, and other terms and conditions of employment of the employees in the unit described above; and by refusing to recognize and bargain in good faith with the exclusive representative of the employees employed in the unit described above.

8. The unfair labor practices found to have been engaged in, as described above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Pollock Manufacturing, Inc.; Charles E. Pollock, an individual; Charles C. (Chris) Pollock t/a Pollock Apparel; and Elite Manufacturing, Inc. engaged in certain unfair labor practices in violation of Section 8(a)(1), (3), and (5) of the Act, I shall recommend that they be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondents shall be required to offer immediate reinstatement to their former positions of employment or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, to all employees terminated as a result of the December 1991 closure of Pollock Manufacturing, Inc. The Respondents shall dismiss, if necessary, anyone who may have been hired or assigned to perform the work that they had been performing prior to their termination in December 1991. The Respondents shall be required to make these employees whole for all losses they suffered by reason of their unlawful terminations. Backpay shall be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with appropriate interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, the Respondents shall be required to make whole all employees for any losses sustained by the failure to apply the terms and conditions of the above-described collective-bargaining agreement to employees employed by Charles C. (Chris) Pollock t/a Pollock Apparel and Elite Manufacturing, Inc. The Respondents shall also commence immediately to give effect to the collective-bargaining agreement with the Union and maintain the terms and conditions of employment contained in that agreement in effect until agreement is reached through collective bargaining on new terms and conditions of employment of the unit employees or a bonafide impasse is reached in negotiations.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[3]

ORDER

The Respondents, Charles E. Pollock, an individual, Pollock Manufacturing, Inc., Charles C. (Chris) Pollock t/a Pollock Apparel, and Elite Manufacturing, Inc., Blakely, Georgia, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Deciding to close, closing, and reopening facilities under a different name in an effort to terminate existing bargaining relationships and to escape the obligations imposed by collective-bargaining agreements.

(b) Failing and refusing to apply to all employees in the contractual bargaining unit all terms and conditions of employment contained in the collective-bargaining agreement between Pollock Manufacturing, Inc. and the Union, absent the express written consent of the Union.

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(c) Terminating operations, replacing, discharging, refusing to reinstate, or otherwise discriminating against employees regarding hire or tenure of employment or any term or condition of employment for engaging in activities on behalf of a labor organization or for engaging in activity protected by Section 7 of the Act.

(d) Refusing to recognize and to bargain collectively with the Union in the contractual bargaining unit found appropriate.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, recognize and bargain collectively with Amalgamated Clothing and Textile Workers Union as the exclusive collective-bargaining representative of the employees employed in the bargaining unit heretofore found appropriate.

(b) Apply the terms and conditions of the aforesaid collective-bargaining agreement with Amalgamated Clothing and Textile Workers Union to the employees employed in the appropriate bargaining unit.

(c) Make whole all employees and any appropriate trust fund for all loses suffered as a result of the failure to apply the terms and conditions of the aforesaid collective-bargaining agreement to employees employed in the bargaining unit described herein.

(d) Offer to all employees terminated as a result of the closure of Pollock Manufacturing, Inc. in December 1991 immediate and full reinstatement to their former positions of employment dismissing, if necessary, anyone who may have been hired to perform the work that they had been performing prior to the date on which they were terminated or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for all losses suffered as a result of the discrimination against them in the manner set forth above in the remedy section of this decision.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at its Blakely, Georgia facility copies of the attached notice marked ''Appendix.''[4] Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondents' authorized representative, shall be posted by the Respondents immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Mail copies of the attached notice marked ''Appendix'' to the last known address of all employees terminated as a consequence of the closing of Pollock Manufacturing, Inc. and Pollock Apparel.

(h) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondents have taken to comply.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''